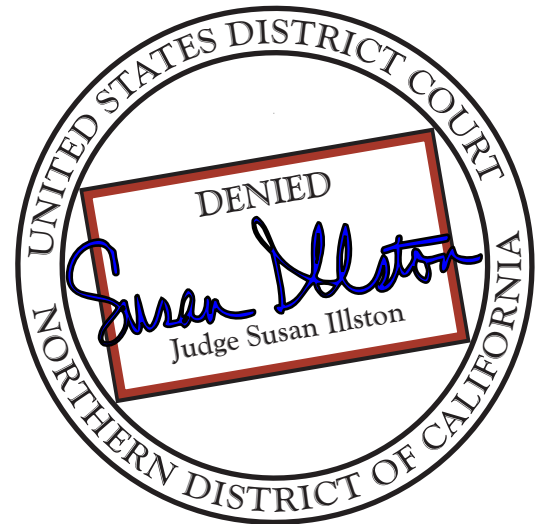


1 JONATHAN R. BASS (State Bar No. 075779)  
SUSAN K. JAMISON (State Bar No. 131867)  
2 MARIO A. MOYA (State Bar No. 262059)  
COBLENTZ, PATCH, DUFFY & BASS LLP  
3 One Ferry Building, Suite 200  
San Francisco, California 94111-4213  
4 Telephone: 415.391.4800  
Facsimile: 415.989.1663  
5 Email: ef-jrb@cpdb.com  
Email: ef-skj@cpdb.com  
6 Email: ef-mam@cpdb.com

7 Attorneys for WAUKEEN Q. McCOY  
in Interpleader Proceeding



8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

EDWARD ALVARADO, et. al.,

Plaintiffs,

v.

FEDEX CORPORATION d/b/a FEDEX  
EXPRESS,

Defendant.

Case No. C 04-0098-SI; No. 04-0099-SI

**EX PARTE APPLICATION TO  
CONTINUE APRIL 23, 2009 HEARING  
ON INTERPLED FUNDS**

Hearing Date: April 23, 2009  
Time: 9:00 a.m.  
Courtroom: 10, 19th Floor  
Judge: Honorable Susan Illston

**INTRODUCTION**

Waukeen Q. McCoy hereby moves, *ex parte*,<sup>1</sup> for an order continuing the April 23, 2009 hearing on interpleaded funds to a date convenient to the Court during the week of April 27 or after May 19, 2009. This brief continuance will provide Mr. McCoy's counsel, who has just been retained, sufficient time to familiarize himself with the matter, and will allow Mr. McCoy, who has been ordered to attend a pretrial conference in Los Angeles on April 23, to attend the hearing

<sup>1</sup> This motion is made pursuant to Civil Local Rule 7-11.

1 and give testimony. Yesterday, we asked the parties to stipulate to this brief continuance. Two of  
2 them have declined to do so.

### 3 ARGUMENT

#### 4 **I. THERE IS GOOD CAUSE TO CONTINUE THE HEARING.**

5 Mr. McCoy's counsel was first approached concerning this matter on Friday, April 17, and  
6 actually engaged yesterday, April 20. He would benefit from a reasonable opportunity to prepare  
7 for the hearing. Continuing the hearing to the week of April 27 would provide that opportunity.  
8 (Declaration of Jonathan R. Bass, ¶¶ 2-3; Declaration of Waukeen Q. McCoy, ¶ 2.)

9 Mr. McCoy will be unable to attend the April 23 hearing because he has been ordered to  
10 attend a pretrial conference in Los Angeles Superior Court, and his request to continue that  
11 hearing, to have an associate attend in his place, or to appear telephonically, have all been denied  
12 by that Court. (McCoy Decl., ¶ 3.) The two-week trial in that case is set for on May 4, 2009.  
13 (*Id.*, ¶ 3.)

14 In light of the fact that Mr. McCoy has just retained counsel, and given his inability to  
15 attend the April 23 hearing, good cause exists to grant a brief continuance.

16 In an effort to resolve this scheduling matter by way of stipulation, we wrote to counsel for  
17 the parties yesterday. (Bass Decl, Exh. A.) We received two rejections, one from counsel for Kay  
18 McKenzie Parker, and the other from counsel for FedEx Corporation. (*Id.*, Exhs. B and C.)

19 All that we are asking for is a continuance of a few days, to a date (if one is available) next  
20 week. This is hardly the sort of schedule change that would afford Mr. McCoy any tactical  
21 advantage vis a vis the other parties. The plain fact is that Mr. McCoy only recently came to  
22 realize that he should not be handling this matter by way of self-representation, and so he engaged  
23 counsel – the firm that is already representing him on the Ninth Circuit appeal of the Court's ruling  
24 in the *Satchell v. FedEx Corporation* action. In the course of reviewing the matter, counsel  
25 learned that Mr. McCoy had a pretrial conference in another case in Los Angeles on April 23, but  
26 it was believed that the judge in that case would accommodate this hearing – by continuing that  
27 conference, by allowing Mr. McCoy's associate to appear, or by allowing a telephonic appearance.  
28 But the judge denied all of those requests yesterday. (McCoy Decl., ¶ 3.) It was at that point that

1 we decided to ask counsel whether they would stipulate to a brief continuance of this hearing, and  
2 to make an *ex parte* application if they refused. (Bass Decl., ¶ 3.)

3 Mr. McCoy had nothing to gain, tactically or otherwise, by waiting until a few days before  
4 the hearing to retain counsel, and he had nothing to gain from being summoned to a pretrial  
5 conference in Los Angeles on the same day that this hearing is set. It probably would have been  
6 wiser to have retained counsel earlier, and to have attempted to solve the scheduling conflict  
7 earlier as well. But, given the relatively modest relief we are seeking, we do not believe that either  
8 lapse on his part should dictate the outcome.

9 **CONCLUSION**

10 For the foregoing reasons, Mr. McCoy requests that the evidentiary hearing that is  
11 currently scheduled in this case be continued to a date during the week of April 27, or after May  
12 19, 2009.

13  
14 DATED: April 21, 2009

COBLENTZ, PATCH, DUFFY & BASS LLP

15  
16 By: /S/  
17 JONATHAN R. BASS  
18 Attorneys for  
19 WAUKEEN Q. McCOY  
20  
21  
22  
23  
24  
25  
26  
27  
28